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CLERK U.S. DISTRICT COURT  
N.D. CALIFORNIA

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ADR

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15 Oracle America, Inc.

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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 C V 11 - 1043  
21 CASE NO.

HRL

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28 COMPLAINT

ORACLE AMERICA, INC.  
Plaintiff,  
v.  
INNOVATIVE TECHNOLOGY  
DISTRIBUTORS LLC  
Defendant.

Plaintiff Oracle America, Inc. ("Oracle"), alleges:

INTRODUCTION

1. Starting from in or about July, 2010, Oracle sold to Defendant Innovative Technology Distributors LLC ("ITD"), millions of dollars of hardware products for which ITD has failed and refused to pay. As of the present date, ITD owes Oracle over \$19 million that Oracle invoiced to ITD pursuant to the terms of the parties' written agreement. ITD received the products it ordered, and, Oracle is informed and believes, resold them to end user customers for amounts greater than the

1 amounts that ITD owes Oracle, and yet, ITD continues to refuse to pay Oracle for the products it  
2 ordered and received, and for which Oracle issued proper and undisputed invoices to ITD for  
3 payment.

4 **PARTIES**

5 2. Plaintiff Oracle America, Inc. ("Oracle"), is a Delaware corporation, with its principal  
6 place of business in Redwood Shores, California. Oracle is the successor in interest to Sun  
7 Microsystems, Inc. ("Sun").

8 3. Oracle is informed and believes that Defendant Innovative Technology Distributors  
9 LLC ("ITD"), is a New Jersey Limited Liability Company, with its principal place of business in  
10 Edison, New Jersey. Oracle is further informed and believes that each of the members of the LLC is  
11 a resident of New Jersey.

12 **JURISDICTION AND VENUE**

13 4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1332(a),  
14 because the matter in controversy exceeds \$75,000, and is between citizens of different states.

15 5. Venue is proper in this District pursuant to 28 U.S.C. section 1391, because a  
16 substantial part of the events or omissions giving rise to the claims herein occurred within this  
17 District, and because the contract between the parties provides for venue in the "appropriate courts  
18 located in Santa Clara County, California."

19 **INTRADISTRICT ASSIGNMENT**

20 6. This case should be assigned to the San Jose Division, as the contract between the  
21 parties provides for venue in the "appropriate courts located in Santa Clara County."

22 **BACKGROUND FACTS**

23 7. Sun was in the business of designing, manufacturing, distributing, and selling servers,  
24 storage, software, and networking products and related services. Oracle acquired Sun in January,  
25 2010, and succeeded to all of Sun's rights and obligations with respect to the Sun-ITD Agreement  
26 described below.

1       8. ITD is in the business of, among other things, reselling computer hardware and  
2 related services to customers such as Verizon, Alcatel-Lucent, Motorola and other companies  
3 primarily in the telecommunication industry.

4       9. On or about June 29, 2005, Sun and ITD entered into an agreement whereby ITD was  
5 permitted to order products and/or services from Sun under terms specified in the agreement (the  
6 "Sun-ITD Agreement"). The Sun-ITD Agreement is comprised of two documents: a document  
7 entitled General Terms, and the iForce Business Terms Exhibit to the General Terms. True and  
8 correct copies of these documents are attached hereto as Exhibit A. On or about September 25,  
9 2009, Sun and ITD executed Amendment 1 to the Sun-ITD Agreement ("Amendment 1"). A true  
10 and correct copy of Amendment 1 is attached hereto as Exhibit B.

11      10. In January, 2010, Oracle acquired Sun and succeeded to its rights under the Sun-ITD  
12 Agreement. As part of a general process that Oracle undertook to move Sun's resellers from Sun's  
13 legacy contracts to Oracle's form of reseller agreements, Oracle notified ITD that the Sun-ITD  
14 Agreement would be terminated on December 31, 2010, pursuant to its 90-day termination  
15 provision. However, to allow ITD to continue reselling to a certain set of customers referred to as  
16 "Network Equipment Providers" or "NEPs," the parties agreed to modify and extend the Sun-ITD  
17 Agreement through June 30, 2011, by executing an Amendment 2 to the Agreement ("Amendment  
18 2"). A true and correct copy of Amendment 2 is attached hereto as Exhibit C. The Sun-ITD  
19 Agreement, Amendment 1, and Amendment 2 are collectively referred to herein as the Oracle-ITD  
20 Agreement.

21      11. Pursuant to the Oracle-ITD Agreement, beginning in or about July, 2010, ITD placed  
22 hundreds of orders for Oracle products and services valued at over \$19 million. In or about mid  
23 November 2010, Oracle placed ITD on credit hold, because ITD owed Oracle millions of dollars in  
24 invoices that were past due, and told ITD that Oracle would no longer sell directly to ITD until it  
25 brought its account current. Attached hereto as Exhibit D is a true and correct copy of a spreadsheet  
26 listing each purchase, and indicating a total amount due to Oracle from ITD of \$19,105,396.00.

12. Section 4.2 of the iForce Business Terms Exhibit, which is part of the Oracle-ITD Agreement, requires payment by ITD "within thirty (30) days of the date of the invoice or, in the case of Products, delivery (whichever is the later)."

13. On or about February 2, 2011, Oracle Vice President Nigel Ball contacted Jim Spinella, ITD's principal and an ITD senior executive, to escalate to the senior executive level discussion of the past due amounts owed by ITD to Oracle. On or about February 3, 2011, Oracle Senior Vice President Bhaskar Gorti made one last effort to discuss with Mr. Spinella the amounts ITD owes to Oracle. Mr. Spinella refused to discuss the matter with Mr. Ball or Mr. Gorti, referring Mr. Gorti instead to ITD's outside counsel for any further discussions regarding issues in dispute between the companies. Thereafter, on March 1, 2011, the parties' senior executives and legal counsel did meet in person to discuss, among other things, the past due amounts owed by ITD to Oracle. As before, ITD stated its ongoing refusal to pay Oracle any amount of the past due invoices. Thirty days have passed since Oracle's escalation to ITD senior management of the dispute regarding the past due amounts owed by ITD to Oracle, with no resolution of the dispute.

14. ITD has failed and refused to pay Oracle the amount of \$19,105,396.00, for products it ordered and received, despite repeated demand by Oracle, and there is now due and owing from ITD to Oracle the sum of \$19,105,396.00, plus interest.

## **FIRST CAUSE OF ACTION**

### **(Breach of Contract)**

15. Oracle incorporates herein each and every allegation in paragraphs 1 through 12 above.

16. Oracle has performed all covenants of the Oracle-ITD Agreement, on its part to be performed.

17. ITD has breached the Oracle-ITD Agreement by failing and refusing to pay the sum of \$19,105,396.00 for products ordered by ITD and received by ITD.

18. As a proximate result of ITD's breach, Oracle has been damaged in the sum of \$19,105,396.00, plus interest.

## **SECOND CAUSE OF ACTION**

**(Goods Sold and Delivered)**

19. Oracle incorporates herein each and every allegation in paragraphs 1 through 12 above.

20. Within the last four years, ITD became indebted to Oracle in the sum of \$19,105,396.00 for goods sold and delivered by Oracle to ITD.

21. Oracle has made repeated demand for payment of this amount to ITD, but ITD has failed and refused to make payment, and there is now due and owing the sum of \$19,105,396.00, plus interest, from ITD to Oracle.

### **THIRD CAUSE OF ACTION**

**(Account Stated)**

22. Oracle incorporates herein each and every allegation in paragraphs 1 through 12 above.

23. In or about January, 2011, an account was stated in writing by and between Oracle and ITD based on the invoices submitted by Oracle to ITD and on such statement a balance of \$19,105,396.00 was noted as due to Oracle from ITD. Due to the volume of the invoices at issue, the spreadsheet attached hereto as Exhibit D summarizes the writings that constitute the stated account. ITD has not disputed that it received the products reflected in such statement or that it was obligated under the Oracle-ITD Agreement to pay for products it ordered from Oracle.

24. Although demanded by Oracle, no part of the \$19,105,396.00 balance has been paid, and there is now due and owing from ITD to Oracle the sum of \$19,105,396.00 plus interest and attorneys' fees pursuant to Civil Code section 1717.5.

WHEREFORE, Oracle prays for judgment as follows:

1. For damages according to proof but not less than \$19,105,396.00;
2. For attorneys' fees pursuant to Civil Code section 1717.5;
3. For interest at the legal rate; and
4. For such other and further relief as the Court deems proper.

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2 Dated: March 7, 2011

HOLME ROBERTS & OWEN LLP

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By:



Meryl Macklin

Attorneys for Plaintiff Oracle America, Inc.